

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated.

Rulemaking 01-09-001  
(Filed September 6, 2001)

Order Instituting Investigation on the Commission's Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated.

Investigation 01-09-002  
(Filed September 6, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING (1) DENYING PACIFIC'S MOTIONS TO BIFURCATE PHASE 3B AND REVISE THE SCOPE OF PHASE 3B, AND (2) GRANTING, IN PART, VERIZON'S MOTION TO ADJUST THE SCHEDULE FOR PHASE 3B**

**Pacific's Motion to Bifurcate Phase 3B**

On November 19, 2002, Pacific Bell Telephone Company (Pacific) filed a motion to bifurcate Phase 3B of this proceeding. The purpose of Phase 3B is to address, among other things, the following: (1) whether the price-cap index mechanism and the earnings sharing mechanism should be eliminated permanently, continue to be suspended, or be reinstated, and (2) if reinstated, proposals for the components of each mechanism. Pacific moves to bifurcate issues (1) and (2) into separate proceedings. Pacific believes that such bifurcation would promote regulatory efficiency by allowing the Commission and the parties to first resolve the threshold policy issue of whether each mechanism should be eliminated, continue to be suspended, or reinstated. If the

Commission decides to eliminate or continue the suspension of these mechanisms, the second issue would be rendered moot. Thus, by deciding issue (1) before issue (2), the Commission and the parties avoid potentially unnecessary and burdensome litigation.

Responses to Pacific's motion were filed by the Office of Ratepayer Advocates (ORA) and Verizon California Inc. (Verizon). ORA opposes Pacific's motion on the grounds that the details of any price-cap index and sharing mechanisms that may be reinstated are relevant to the Commission's deliberations on the fate of these mechanisms. Verizon states that rather than bifurcating Phase 3B, the Commission should (1) provide more time between opening and reply testimony, and (2) allow a third round of rebuttal testimony. Verizon believes that its proposal would create a more coherent and complete record on which the Commission may decide fundamental issues.

Pacific's motion is denied for the reasons set forth in ORA's response. Verizon's proposal to revise the schedule for Phase 3B to provide for three rounds of testimony is also denied.

**Pacific's Motion to Remove Service Quality Issues from Phase 3B**

On December 18, 2002, Pacific filed a motion to revise the scope of Phase 3B to transfer service quality issues from this proceeding to Order Instituting Rulemaking (R.) 02-12-004. The purpose of R.02-12-004 is as follows:

This proceeding will determine [for all certificated and registered telecommunications carriers] the types of services for which measures and standards should apply, the kind of measures and standards that should apply to those services, the methods for calculating measures, the minimum levels that measured parameters of service should meet . . . , when and how the measures should be reported to this Commission, and the mechanisms that will

be used to ensure compliance with established requirements. (R.02-12-004, *mimeo.*, p. 1)

The focus of the instant proceeding with respect to service quality is as follows:

In D.89-10-031, the Commission stated that the availability of high quality service was one of the central goals of NRF. Accordingly, the Commission in D.89-10-031 adopted a program to monitor service quality to ensure that service quality did not deteriorate under NRF. The Commission stated that if the monitoring efforts revealed that ratepayers were being harmed through deteriorating service quality, the Commission would take immediate steps to rescind or alter NRF.

In Phase 3, the Commission will consider whether and how NRF should be revised to achieve the Commission's goal of high-quality service. Parties will have an opportunity in Phase 3 to recommend revisions to NRF that should be considered by the Commission in light of the record developed in Phase 2 regarding how service quality has fared under NRF. Parties may also offer recommendations in Phase 3 regarding how NRF should be revised to promote the availability of high quality services, such as a system of financial carrots and sticks tied to measurements of service quality. There will not be an opportunity in Phase 3 to litigate issues of fact regarding the quality of service provided by Pacific and Verizon. All litigation of factual issues pertaining to service quality must occur in Phase 2. (R.01-09-001/I.01-09-002, *mimeo.*, Appendix A, pp. A-10 and A-11. Citations omitted.)

It is clear that the issues pertaining to service quality that will be considered by the Commission in Phase 3B of this proceeding are markedly different from those that will be considered by the Commission in R.02-12-004. Consequently, there is no apparent benefit or other compelling reason to transfer

service quality issues from this proceeding to R.02-12-004. Therefore, Pacific's motion to do so is denied.<sup>1</sup>

**Verizon's Motion to Adjust the Schedule for Phase 3B**

On December 4, 2002, Verizon filed a motion to adjust the schedule for Phase 3B to postpone opening testimony until 60 days following the issuance of a final decision in Phase 2A or 2B, whichever is later. Verizon states that it is necessary to defer the date for submitting opening testimony in Phase 3B, currently set for January 24, 2003, because draft decisions in Phases 2A and 2B, which will shape the parties' testimony in Phase 3B, have not yet been issued.

Pacific, ORA, and The Utility Reform Network (TURN) filed responses supporting Verizon's motion. TURN adds that if Verizon's motion is granted, the Commission should also order Pacific and Verizon to establish memorandum accounts to track their earnings on a going forward basis. TURN believes the memorandum accounts are necessary because granting Verizon's motion will likely delay the issuance of a final decision in Phase 3B, which could delay the adoption of an earnings sharing mechanism, productivity factor, and other measures beneficial to ratepayers. Verizon filed a reply opposing TURN's proposal to establish memorandum accounts.

Verizon has presented good cause to adjust the schedule for Phase 3B. It is anticipated that proposed decisions will be issued in Phases 2A and 2B by the end of January 2003, in time for consideration by the Commission at its meeting of February 27, 2003. The proposed decisions should provide a reasonable basis

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<sup>1</sup> This ruling is being made pursuant to Rule 45(h), which allows an Administrative Law Judge to rule on a motion before responses or replies are filed.

for the parties to prepare their opening testimony in Phase 3B.<sup>2</sup> In order to provide sufficient time for the parties to incorporate the proposed decisions into their Phase 3B opening testimony, the date for submitting the testimony will be moved from January 24, 2003, to February 28, 2003. All other dates for Phase 3B will be adjusted accordingly. The revised schedule for Phase 3B is attached to this ruling.

Verizon's motion to revise the schedule for Phase 3B is granted and denied to the extent set forth above. TURN's request to implement memorandum accounts to track Pacific's and Verizon's earnings is denied at this time.

**IT IS RULED** that:

1. The schedule for Phase 3B of this proceeding is revised as set forth in the body of this ruling and the attached appendix.
2. Pacific's and Verizon's motions are granted and denied as set forth in this ruling.
3. TURN's and Verizon's proposals described in this ruling are denied.

Dated December 23, 2002, at San Francisco, California.

/s/ TIMOTHY KENNEY

Timothy Kenney

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<sup>2</sup> The assigned ALJ and/or assigned Commissioner may revise the scope and schedule for Phase 3B reply testimony, as necessary and appropriate, in the event that any of the final decisions in Phase 2 differ substantially from the proposed decisions.

Administrative Law Judge

<b>Phase 3B Schedule</b>	
<b>Event</b>	<b>Date</b>
Written Testimony re: Phase 3B Issues	Opening Testimony: February 28, 2003 Reply Testimony: April 4, 2003
Motions to Strike	Motions to Strike: April 9, 2003 Replies to Motions: April 16, 2003
Evidentiary Hearings	April 28–May 13, 2003
Briefs re: Phase 3B Issues	Opening Briefs: May 30, 2003 Reply Briefs: June 13, 2003
Requests for Final Oral Arguments before the Commission.	May 30, 2003
Final Oral Arguments. Proceeding Submitted.	June 2003
Draft Decision re: Phase 3B	August 2003

## **CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling (1) Denying Pacific's Motions to Bifurcate Phase 3B and Revise the Scope of Phase 3B, and (2) Granting, in Part, Verizon's Motion to Adjust the Schedule for Phase 3B on all parties of record in this proceeding or their attorneys of record.

Dated December 23, 2002, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

## **N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.